

FACTSHEET

TITLE: ANNEXATION NO. 01006, requested by the Kent Seacrest on behalf of Andermatt, L.L.C. and Eiger Corporation, to annex 245.09 acres, more or less, generally located at South 84th Street and Nebraska Highway 2.

STAFF RECOMMENDATION: Approval, subject to an Annexation Agreement.

ASSOCIATED REQUESTS: Declaration of Surplus Property (01-155); Street Vacation No. 01015 (01-156); Change of Zone No. 3320 (01-157); Change of Zone No. 3285 (01-158); Preliminary Plat No. 01006, Appian Way (01R-278); and Use Permit No. 140 (01R-279).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission

Public Hearing: 09/19/01

Administrative Action: 09/19/01

RECOMMENDATION: Approval, subject to an Annexation Agreement (6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Krieser absent).

FINDINGS OF FACT:

1. This application and the associated Declaration of Surplus Property, Change of Zone No. 3320, Change of Zone No. 3285, the Appian Way Preliminary Plat No. 01006 and Use Permit No. 140 were heard at the same time before the Planning Commission on September 19, 2001. The associated Street Vacation No. 01015 was heard by the Planning Commission on October 3, 2001.
2. The staff recommendation to approve the annexation, subject to an annexation agreement, is based upon the following analysis:
 - A. This area is contiguous to the city.
 - B. This annexation proposal is in conformance with the Comprehensive Plan. Specifically, it meets the annexation policies of the plan and is within the future service limit. Although it is shown as Phase II in the phasing plan, the Conditional Annexation and Zoning Agreement provides for the area's infrastructure needs.
 - C. Even though a proposal is in conformance within the future service limit, the City should only approve an annexation when the infrastructure is in place or has been provided for in the City's C.I.P. or by the applicant. In this case the developer has agreed to an annexation agreement which commits the developer to contribute to the cost of public improvements.
 - D. If approved, the Conditional Annexation and Zoning Agreement accompanying this annexation will require that some items in the City's Capital Improvements Program be moved up, while other projects are pushed farther into the future.
3. The minutes of the public hearing before Planning Commission are found on p.8-18.
4. The applicant's testimony is found on p.8-13 and 16-17.
5. Testimony in support is found on p.13-14; however, the representatives of Cheney expressed concerns about Cheney not being annexed with this development. The staff response and discussion with the Commission is found on p.14-16.
6. There was no testimony in opposition.
7. The Planning Commission voted 6-2 to recommend approval of the annexation. Commissioners Carlson and Newman voted against the project as a whole. See Minutes, p. 17-18. The vote on this application is found on p.19.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: October 15, 2001

REVIEWED BY: _____

DATE: October 15, 2001

REFERENCE NUMBER: FS\CC\FSA01006

LINCOLN CITY/LANCASTER COUNTY PLANNING STAFF REPORT

This is a combined staff report for related items. This report contains a single background and analysis section for all items. However, there are separate conditions provided for each individual application.

****As Revised by Planning Commission on 9/19/01****

P.A.S.:

Appian Way

DATE: September 5, 2001

Annexation #01006

Change of Zone #3320 (AG to R-3)

Change of Zone #3285 (AG to B-5)

Preliminary Plat #01006

Use Permit #140

PROPOSAL: Annexation #01006

Annexes 245 acres into the City of Lincoln

Change of Zone #3320

Changes the zoning on 98.8 acres east of relocated 91st Street from AG to R-3

Change of Zone #3285

Changes the zoning on 146.3 acres between 84th and relocated 91st Street north of Highway 2 from AG to B-5

Preliminary Plat #01006

28 commercial lots and 8 outlots

Use Permit #140

803,400 square feet of commercial space, with the option to expand to 940,000 square feet, provided PM peak hour trips do not exceed 2,925

LAND AREA: 245.09 acres, more or less.

CONCLUSION: The annexation proposal is in conformance with the Comprehensive Plan. Specifically it meets the annexation policies of the plan and is within the future service limit.

Both changes of zone conform with the Land Use Plan and the Comprehensive Plan.

The preliminary plat and use permit require a number of corrections in order to meet design standards and require some design changes in order to bring them into harmony with the Comprehensive Plan and codes.

RECOMMENDATION:	Annexation:	Approval
	Change of Zone #3320:	Approval
	Change of Zone #3285:	Approval
	Preliminary Plat:	Conditional Approval
	Use Permit:	Conditional Approval

GENERAL INFORMATION:

LEGAL DESCRIPTIONS:

Annexation: Lots 58, 72, 84, 85, 87 I.T. and a portion of Lots 56, 71, 82, 90, 91, and 92 I.T., and a portion of S. 91st Street right of way to be vacated and a portion of State of Nebraska right of way, all located in Section 23, T9N, R7E, Lancaster County, Nebraska.

LOCATION: S. 84th Street and Highway 2

APPLICANT: Eiger Corporation
Andermatt, L.L.C.
Kelvin Korver
R.R. 1, Box 93A
Adams, NE 68301

OWNERS: Andermatt L.L.C.
Eiger Corporation
David S. Olson
Realty Trust Group
Westcor L.L.C.
City of Lincoln
Nebraska Department of Roads

CONTACT: Kent Seacrest & DaNay Kalkowski
Seacrest & Kalkowski
1111 Lincoln Mall - Suite 350
Lincoln, NE 68508
402-435-6000

EXISTING ZONING: AG Agricultural

EXISTING LAND USE: Open fields with a City water tower.

SURROUNDING LAND USE AND ZONING:

North: AG and R-3 Fields, acreages, and Vintage Heights
South: AG and AGR Fields and acreages east of S. 91st Street

East:	AG	Fields and acreages
West:	AGR	Acreages and the Pine Lake SID to the northwest

ASSOCIATED APPLICATIONS: Comprehensive Plan Conformance #01002, which declares the 84th & Pine Lake Road water tank site surplus.

HISTORY:

Nov. 1994	The 1994 Lincoln/Lancaster County Comprehensive Plan is adopted including a potential regional commercial center at 84 th and Highway 2.
Nov. 1997	A draft 84 th & Highway 2 Subarea Plan was submitted without traffic, environmental and other studies. The draft subarea plan was deferred until the studies were completed.
Sept. 2000	Kent Seacrest, on behalf of Andermatt LLC, submitted a draft subarea plan, change of zone and associated studies related to the request for a regional commercial center at 84 th & Highway 2.
May 2001	The 84 th & Highway 2 Subarea Plan was adopted, including a regional commercial center with 1.9 million square feet of floor area.
Aug. 30, 2001	A signed Annexation Agreement was delivered to the Planning Department.

COMPREHENSIVE PLAN SPECIFICATIONS: The commercial area is designated as Commercial in the Comprehensive Plan and as a Mixed Use Regional Center in the Southeast Lincoln/Highway 2 Subarea Plan. The residential area is designated as Urban Residential. Both areas are shown as Phase II in the Phasing Plan.

City of Lincoln Future Commercial Needs and Plan

Goals:

- Encourage the coordination of the siting of regional retail centers and the transportation plan.
- Provide geographically convenient and accessible retail areas throughout the City and County so as to provide the widest possible variety of goods and services.
- Discourage strip development and spot zoning and encourage more compact and higher quality retail and commercial development.
- Attempt to eliminate conflicts between retail and institutional land use when siting new retail locations.
- Encourage the development of regional corporate office space in appropriate locations.
- Provide for the location of employment areas at sites which are convenient to existing and proposed residential areas throughout the county and accessible from the existing or proposed transportation system.
- Discourage strip development and encourage more compact and higher quality development.

- Encourage the development of competing regional retail centers while recognizing Gateway as currently being the dominant regional retail center.
- Assure that economic development is accomplished with respect for environmental quality.(p. 54)

Mixed Use Centers

The Comprehensive Plan identifies this area as a mixed use center with 1.9 million square feet of commercial uses. Page 67 of the Comprehensive Plan states:

Mixed use areas present special design opportunities. Buildings and facilities in the centers should relate to one another as an urban grouping. Parking facilities should provide convenient service, but should not dominate the project design. The centers should be completely integrated into all community transportation systems, including public transportation and trails networks. Finally, the mixed use centers should provide the contemporary equivalent of a traditional business district, with customer amenities and public spaces.

Developing mixed use centers will be subject to detailed review during the development process including specific review of site plans, impacts of the proposed project on the environment, traffic, utilities, public services, abutting neighborhoods and the community as a whole.

Strategies:

- New mixed use areas will be of the highest quality urban design.
- Desirable open spaces, buffers and landscaping will be provided in each mixed use area.
- The natural features of the site, including views, significant vegetation and natural topography will be preserved in each mixed use area.
- Human scale design shall be encouraged with linkages between neighborhoods for pedestrians and bicyclists as well as motorists.
- Master planning of contiguously owned property will be strongly encouraged.
- All new major discount or full line retailers will be located in mixed use centers.

Solid Waste Strategies:

- Encourage community-wide recycling programs, including the location of sites for material collection and handling/processing at strategic locations.
- Include recycling collection facilities at major public places, such as mixed use areas.(page 146)

Phasing Plan:

Phase II: Areas designated for near term development... contiguous to existing or planned development but lacking one or more items of infrastructure, such as an arterial road, park, or trunk sewer.

UTILITIES: The extension of existing utilities to serve this area is outlined in the Conditional Annexation and Zoning Agreement.

The Capital Improvements Program (C.I.P.) shows the construction of a 48" major transmission water main in S. 84th Street from O Street to Yankee Hill Road in 2000-2004.

The C.I.P. shows the construction of trunk sanitary sewer along S. 91st Street from Pine Lake Road to Highway 2 in 2002-2003.

TOPOGRAPHY: The proposed commercial area rises from the exiting roads to an elevation of 1440 NAVD. The total height difference between the edges of the site and the hilltop ranges from 40 to 80 feet.

TRAFFIC ANALYSIS: The Southeast Lincoln/Highway 2 Subarea Plan shows the realigned Pine Lake Road, S. 84th Street, and S. 91st Street as new arterials. Highway 2 is classified as an arterial street.

The C.I.P. currently identifies road improvements on Pine Lake Road in 2005-6 and S. 84th Street in 2003-2004.

The 1.9 million square feet of retail at build out generate a number of trips, which trigger the road improvements outlined in the annexation agreement.

REGIONAL ISSUES: The impact 940,000 square feet of commercial space will have on the transportation network and city infrastructure.

ENVIRONMENTAL CONCERNS: Preservation of wetlands in the southeast corner of the commercial site.

AESTHETIC CONSIDERATIONS: Highway 2 is a major entryway into Lincoln. The applicant has provided a 100' building and parking setback along Highway 2 which will be landscaped with trees and native grasses. The site provides 800 more parking spaces than are required for the amount of commercial use proposed. Redesigning the site with fewer parking stalls would allow more open space within the shopping center.

ALTERNATIVE USES: A mixed use center which includes more office sites and residential uses. A mixed use center with higher density. The proposed Floor Area Ratio is .14, well below the .25 expected in new developing areas.

ANALYSIS:

Annexation

1. This area is contiguous to the city.
2. This annexation proposal is in conformance with the Comprehensive Plan. Specifically it meets the annexation policies of the plan and is within the future service limit. Although it is shown as Phase II in the phasing plan, the Conditional Annexation and Zoning Agreement provides for the area's infrastructure needs.

3. Even though a proposal is in conformance within the future service limit, the City should only approve an annexation when the infrastructure is in place or has been provided for in the City's C.I.P. or by the applicant. In this case the developer has agreed to an annexation agreement which commits the developer to contribute to the cost of public improvements.
4. If approved, the Conditional Annexation and Zoning Agreement accompanying this annexation will require that some items in the City's Capital Improvements Program be moved up, while other projects are pushed farther into the future.

**COMPREHENSIVE PLAN CONFORMANCE NO. 01002,
DECLARATION OF SURPLUS PROPERTY;
ANNEXATION NO. 01006;
CHANGE OF ZONE NO. 3285;
CHANGE OF ZONE NO. 3320;
PRELIMINARY PLAT NO. 01006, APPIAN WAY;
and
USE PERMIT NO. 140**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

September 19, 2001

Members present: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn; Krieser absent.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan for Comprehensive Plan Conformance No. 01002; approval of the annexation, subject to an annexation agreement; approval of the changes of zone; and conditional approval of the preliminary plat and use permit.

Proponents

1. Kent Seacrest appeared on behalf of **Eiger Corporation**, the developer of the 84th & Hwy 2 commercial center project. This will potentially be Lincoln's largest commercial center; the most planned commercial center; a project requiring the most amount of energy to get to this stage; Lincoln's largest private sector contribution for public improvements; and the largest neighborhood outreach program. The mailing list for neighborhood meetings included almost 600 people.

Seacrest gave a brief history of this planning effort. The developer started acquiring the property in 1994; the property was put into the Comprehensive Plan as commercial in 1994. There was difficulty in how to quiet Pine Lake Road. They did the first traffic study back in 1994. This project has ended up with four different traffic studies. Also early on, they developed the first peace treaty with the neighborhood groups and relocated a power line running up and down 84th Street. The first set of buffering schemes were worked out with the neighborhood. In 1997, the first subarea plan was shown at a large neighborhood meeting, and there have been a lot of smaller meetings. The developer entered into a second peace treaty with the Pine Lake neighbors in 1998 and worked out a road network. They then worked on moving Pine Lake Road and 84th Street away from the neighborhood which involved shifting that road about 150' to provide more protection to the Pine Lake neighborhood. They also talked about more buffering and how to do the public safety aspects. The second traffic study was done in 1999. In September of 2000, a year ago this month, the official applications were submitted. Last winter and spring the 84th & Hwy 2 Subarea Plan was adopted. During the subarea plan process, we came to consensus and this developer shrunk the commercial area down considerably.

This developer has also heard from the Cheney residents and worked with them, resulting in another traffic study to look at new traffic assumptions. This review has also involved looking at a new sewer solution. Public Works was not comfortable with 30' deep sewers—the community standard is 15'. As a result, the city took the responsibility to say to Cheney that we cannot gravity flow and sewer Cheney. The city did communicate with the Village of Cheney representatives and they will have to wait for the Stevens Creek plan. This developer was asked to look at the Cheney connection. This developer originally abutted the land that would provide the Cheney connection but chose not to exercise an option; however, this developer paid for ½ of a road to get the people of Cheney in and out of their neighborhood.

Seacrest noted that they have had months and months of negotiations with the city staff and have an annexation agreement showing the private sector paying 6.4 million dollars worth of off-site improvements to help build public arterials, public water mains, transmission lines, etc. The city is also paying a considerable sum because this area does not have much infrastructure.

The planning process and negotiations have left Seacrest speechless. He does not want to have to go through that process again. “We all tried hard and we are here today united except for two minor conditions”.

Seacrest stated that they moved 84th Street and Pine Lake Road to help the neighborhood; this development is giving 100' of open space along Hwy 2; this development has a low FAR of .14. The Comprehensive Plan calls for .25 FAR.

Seacrest submitted proposed amendments to the conditions of approval on the preliminary plat:

- Condition #1.1.1 - staff is requiring sidewalks on both sides of the private roadways. Maybe that's a good idea but it is over \$400,000 of extra sidewalks. Seacrest believes that staff is now agreeing to sidewalks on one side of the private roadways. Seacrest showed photographs of other sidewalk patterns in other shopping centers, i.e. Gateway, Edgewood, SouthPointe. This center puts sidewalks at every ring road and to all the key commercial buildings.

- Move Condition #1.1.9 from Site Specific to “Prior to City Council”.

- Amend Condition #1.1.9 in order to get the trail network to work near the intersections.

- If Condition #1.1.1 is amended as requested, Condition #3.6 should be amended to include a waiver of sidewalks along one side of the private roadways.

- Delete “and plants in the median and islands” from Condition #4.2.5. In the public way corridors, they will be doing the Nebraska natural landscape features in the wide medians, and it is the city's responsibility to maintain that natural landscape.

With regard to the conditions of approval on the use permit, Seacrest requested the following amendments:

- same amendment to Condition #1.1.1 as in the preliminary plat regarding sidewalks.

--1.1.3. Revise Note 9 to indicate 50 feet, not 100 feet, as long as the location of a public street or private roadways is not being moved. This gives the applicant the right to shift some lots 50' so long as they are not moving roads.

–delete Condition #1.1.4 to provide at least one area for recycling drop off facilities. Seacrest suggested that if the public wants a recycling drop-off facility, and if the city is willing to pay for it, it could be accommodated. There is no legal requirement that this developer provide it. There is money in the CIP for a recycling center in southeast Lincoln. (Staff disagrees to the deletion of this condition).

--1.1.9 has to do with exterior construction of buildings. Seacrest pointed out that there are two buildings on 91st Street and they are set back 50', but we internally put the parking lots on the back side and the reason we are doing that is eventually we are going to move an LES power line that will go between the back of the building and the back of the parking lot. As a result, we want the parking lot up against the power line. Staff is worried that these buildings would be unattractive, but there is a 50' setback and the developer is willing to commit to a standard in the I-3 ordinance, with no galvanized buildings on public streets and that 30 percent at least be glass or things of that nature. Staff is wanting an R-T standard here and the developer believes that is overkill.

–delete #1.1.10, #1.1.11, #1.1.12. Staff agrees.

–amendments to Condition #1.1.13, #1.1.20 and add Condition #1.1.23.

–add Condition #3.1 to provide an architectural theme prior to approval by Council.

Newman observed that we talk about mixed use and all sorts of transportation systems including public transit. Where would a bus stop in this area? Seacrest stated that they have advised StarTran that this is coming and StarTran has seen the plans. He believes that StarTran does not believe there to be enough rooftops for a bus network, but we would assume they would come out 84th and do the loop road and go back out 91st. We have good access on 84th, Hwy 2, and two places on 91st. We have multiple access potential to the north. Whatever way they can bring the bus to us, we can get them in and out.

Steward inquired about sidewalks on 84th Street. Seacrest confirmed that they are providing sidewalks on both sides of 84th and 91st. They are not showing a sidewalk on Hwy 2 because that is not the proper place for pedestrian experience. There are internal sidewalks.

Steward asked whether there is any provision for a trail connection. Seacrest pointed out that the trail network is coming up the valley, following and hugging the east side of 91st Street and crossing at a light and then goes further down into Jensen Park. We originally tried to put the trail in the middle of the center but it was becoming too complex. It was a better experience to have it on the residential side of the development.

Steward asked Seacrest to characterize the landscaping attitude. Seacrest responded, stating that one of the major principals of this development team is the owner and developer of South Pointe.

Along Hwy 2 and the medians, we will go with the Nebraska natural landscape feature. If we can afford it, we might look at water systems. Within the center there will be a high amenity aspect.

Although not an element of requirement, Steward inquired about the philosophy from a design standpoint that gives the client confidence in the continuing big box pattern of an employment center versus connected, more monolithic and indoor environment kind of context. Seacrest stated that new urbanism standards and connectivity work well on a certain scale, but when you start to talk about 1.9 million sq. ft., it gets problematic. We're trying to do a mixture. You're just seeing the first big push. The only way we will survive is through the car until there are rooftops out here. It is not before the Commission today, but Seacrest believes that in the future it will be a South Pointe type facility planned with more pedestrian orientation and more of a local neighborhood feeling. This phase is further from all the rooftops and the closest to Highway 2. The market has responded well wanting those large experiences. Consumers tend to get in their cars to get the best buy.

With regard to the recycling center, Steward asked whether the developer would be willing to "identify" a site on the site plan for a city-owned location. Seacrest would prefer to verify with the city between now and City Council whether they have looked in southeast Lincoln because he is not sure a regional center facility works as good as a neighborhood size center. But, Steward believes there is also a huge generation of recyclable materials in this kind of center. Seacrest agreed, but many of these big boxes do their own recycling. Seacrest does not want this to be a condition of approval. He thinks south of the highway makes more sense and that area is not before the Commission today.

Hunter expressed concern about looking at the increased traffic generation from a recycling center. Seacrest agreed because 90% of the train in this project negotiation was traffic. He will get grouchy if the city's project adds more PM trips.

Hunter asked for clarification of the condition regarding building construction. Seacrest suggested that most of the commercial and office buildings are painted metal. His amendment to Condition #1.1.9 welcomes the use of painted metal--just don't use raw metal--and when you do use painted you can fill up 70% of the space. It can only be used on the sides.

Newman inquired about the cost of moving the water tower. Seacrest explained that the city was planning to do a new water tower down by Jensen Park. This developer is paying the cost for the city to add four million gallons to the tank. At the end of the day, this developer is paying for four million gallons of extra storage of water. This is at the developer's cost.

Carlson noted that this area is identified in the subarea plan as a mixed use center. He is having difficulty envisioning how this proposal accomplishes that goal of a mixed use center. Specifically, within the subarea plan, it talks about buildings relating to one another; parking facilities should not dominate the design; provide contemporary equivalent of business district. He's missing these features. Seacrest acknowledged that they do probably have a larger percentage of retail in this first phase. What's in front of the Commission today includes some office buildings and there will be more office buildings to the north in the next phase.

Carlson wondered about placement and functionality. We would hope that these buildings would relate to each other and that the customer would be encouraged and facilitated to move from store to store. Carlson sees oceans of parking in between the buildings and building backs to building backs. There is a long way to travel to pad site restaurants. It just does not strike him as an urban functional grouping. Seacrest believes there are three blocks from the office user to go to the restaurant. It's a different urban experience than downtown but it's not like you have to get in the car to travel. We've connected everyone with the sidewalk network. Hwy 2 traffic is geared more towards cars in this phase. The second phase is more envisioned to be the collective cluster that Carlson has in mind. That collective cluster—that wonderful experience—usually means higher end retail because there needs to be the money to pay for it. Seacrest suggested that it is going to be awhile for the market to need more high end retail.

Carlson is concerned because the next phases are not in front of him at this time. He wanted to see the master plan and master group. It looks like the traditional No. 27th Street placement of these buildings and the subarea plan is something different. He anticipated big boxes, but he doesn't see how this is relating functionally to each other. It is a big car trip generator and a big pedestrian problem. Why is there not more information in front of us if we are master planning this? Seacrest stated that they do not have tenants for the next phases. We do have infrastructure agreements for the 1.9 million for traffic, sewer, trail, water, and the transportation network. As far as the layouts for the parking and the buildings, technology will be different by the time the next phases come forward. We tried to plan Edgewood and then the market didn't come. We had to replan it and it ended up being the most hodge-podge. Rather than specific buildings and parking, we chose to look at the road network.

Carlson explained that his question is not to the external road network. The 1.9 million is fine. But he is talking about the internal circulation and the internal pedestrian experience. He objects to not having a landscape plan, architectural theme design or the master plan in front of him. He is concerned that this design is not satisfying the entryway goal of the subarea plan. Seacrest pointed out that there has been no development set back 100' on any of the entryways before—no one has done the 100' setback before. We do have in front of you a landscape plan that shows the Nebraska aspect up and down the Hwy 2 corridor. We were not asked for the landscape plan until we saw the staff report last Wednesday after working on this for over a year.

Carlson is referring to the goals listed in the Subarea Plan. He is not talking entryway design standards but the goal for this parcel that it would be a key component as you came into the city with architectural features and elements that would announce itself in a pleasant and attractive way. Seacrest again pointed out that this development exceeds the record on setback; it follows the requirement for a Nebraska landscape on Hwy 2; and we have open space with the .14 FAR. There is not another center with this low of FAR. It was hard. Staff struggled and we struggled. We chose the open space features as being more important. He believes it has been master planned.

Carlson reiterated that he is having difficulty without the design in front of him. Seacrest apologized for not having the architectural features before the Commission.

Hunter commented that one of the things we've all gotten extremely sensitive about is creating an environment that looks like the sea of parking lot that goes in front of Walmart. She thought it was going to be more of a situation like South Pointe where there is a good amount of parking around the box buildings but in the back so that the architectural design of those buildings was more street front instead of having the sea of asphalt. Seacrest suggested that the difference is that No. 27th sits there with no berms and with 40' setbacks. This development has berms and a 100' setback. But, Hunter noted that No. 27th does have pad site tenants along both of those roads and then you have this massive parking lot with the buildings set back. She agrees with Carlson—she thought we were going to be looking at something that looked like a lot less parking and more architectural building in the front. Seacrest noted that South Pointe is .22 FAR. The parking requirements are very similar. This development has a lot more open space than South Pointe and the parking areas are very comparable. The retailer wants the parking in front of the store. We've put berms up and down so that the parking lots are well screened. Hunter observed that South Pointe may have a good amount of asphalt but they have done a much nicer job of landscaping. Looking at a flat plan and not seeing the landscaping plan makes it difficult to see.

2. Julie Southwick, Cheney Community Organization, testified in support; however, she had concerns because the Cheney community left the subarea plan process with the understanding that they would be annexed. Now they are being told that it will be “beyond the planning period”. That means the year 2025 and beyond. They were told 5-7 years during the subarea planning process. The city of Lincoln is encroaching upon Cheney. Cheney is not moving its boundaries into Lincoln. Therefore, it is very important for pre-planning. She could have guaranteed that the Cheney annexation project would not fall in the City's criteria, so what is the solution? Cheney is unique, approximately 130 years old and will continue to survive. However, the economies of the current residents are very limited. Therefore, it is in the best interests of both Lincoln and Cheney to do some pre-planning. Will it be cheaper today before everything is built or cheaper beyond 2025? During the subarea plan process, the Planning Department implied the problems that would need to be addressed for Cheney to be annexed, i.e. sewer, water and schools. Cheney is not a developer or a neighborhood. It is a unique community that is encountering issues from the extension of Lincoln. Perhaps we should see if Lincoln fits into their village criteria. She expressed appreciation to Andermatt for keeping the future services to the surrounding areas in their plans.

Steward asked whether Southwick is satisfied with the subarea plan. Southwick stated that Cheney is definitely satisfied with the Subarea Plan, but we get a letter in June to one of our SID boards and the door was shut. We're not coming to you with a silver platter, but she believes they can work together. Steward thought the subarea plan opened those doors for that cooperation.

3. Lonnie Athey (Athey Painting), 9400 Yankee Hill Road, bought the property with the idea that Cheney would be annexed. We need the sewer and water. Our fire hydrants no longer work because we only have a 2" water main coming to them. He was hoping that the City of Lincoln would try to help them.

4. Herb Twiehaus, a business owner in Cheney, testified that the Cheney residents were more or less lead to believe that they would have access to their own community and that they would eventually be provided with sewer. He is now being told that the developer is willing to provide the sewer but the city is against it because of the depth of the line. There are lines in the city that deep. We can't wait for the Stevens Creek basin to develop to sewer Cheney.

5. Marlyn Schwartz testified in support. The developer has worked out a very nice plan and the developer had originally agreed to provide sewer into Cheney. It seems to him that in this time that we are living that somehow there should be a way to access the sewer of Cheney without making them wait 25-30 years. He knows that city staff had suggested that Cheney should hire an engineer to see how this should be done, but as stated before, this community is existing. It is unfair to grow around this community and leave them isolated without being able to be annexed into the City.

6. Gayle Hanshaw, President of Cheney Community Improvement Program, testified in support. His primary concern at the time of the previous meetings was the access road coming into Cheney. We have learned of recent that the subarea plan is now not the plan that is going to be exercised. It appears that someone is renigging on the original agreement. What he has been hearing is there will be a “temporary” road coming into Cheney. What is a temporary road? He would like to have an explanation of what has happened. It appears that the county was originally going to put the diagonal road in front of Yankee Hill Road to Hwy 2, and then after we got the approval, Andermatt did the traffic study and said there could be a staging area to handle the turning traffic, providing us with a left turn in. As he understands it, the county has withdrawn their offer to build that road. They say it’s a city project. So now the argument is that the city wants the developer to pay for that road. Consequently, the forced expansion of the original subarea plan has now been shrunk back to the original subarea plan proposed by the developer. Don’t we deserve an explanation of why this has changed? How do we go about getting that explanation? It appears like we’re being left out and our interests are not being considered.

There was no testimony in opposition.

Staff questions

Steward inquired about the force and the status of the subarea plan relative to previous agreements.

Jason Reynolds of Planning staff stated that the major element section of the Southeast Lincoln/Highway 2 Subarea Plan recommends “the potential inclusion of the village of Cheney and SID in the city limits, if issues regarding sewer capacity, and impact on Cheney School District can be addressed.” Later in the subarea plan, it talks about specific elements, i.e.

“The expansion of the Future Service Limit in the Cheney area will require further discussion in the future. It is possible that Cheney may be served by the city’s sanitary sewer line once that line is extended into this area. There are numerous issues regarding the Cheney SID and Cheney School District to resolve before this area should be included in the Future Service Limit for potential annexation into the City of Lincoln. The proposed urban residential area north of Cheney, south of Highway 2, should not be developed until these issues are resolved.”

Under the transportation section, it talks about how Cheney would access the relocated Yankee Hill Road northwest of the village between the railroad track and Highway 2, i.e.

“The details of this access point should be resolved prior to the commercial zoning south of Highway 2. Full turning movements into Cheney at this intersection shall be permitted”.

Steward then asked whether there have been detailed discussions regarding the access road. Reynolds explains that the annexation agreement for this project outlines the road alignments. The subarea plan guarantees that Cheney will have access, although that location is not yet determined. With this annexation, the county acquired additional right-of-way, and with the relocation of 91st Street, it will curve out of Cheney. It is within currently purchased right-of-way. At some point in the future, before the south side of Hwy 2 is zoned commercial, that connection needs to be tied down. Steward commented that if the developer takes 20 years to propose that, then Cheney is held hostage. Reynolds explained that Cheney will still have the T intersection. The annexation agreement provides that the area south of the highway is a suburban cross-section.

Schwinn wanted to know where the Cheney residents get the idea that annexation is a 20-25 year process. Reynolds stated that this was information sent in a letter from the staff. They had asked for the timeframe for annexation. Cheney is outside the future service limits. The Comprehensive Plan identifies the Cheney area as phase 4, which is beyond the planning period, and the letter sent from Public Works in June regarding the sewer connection to Cheney said that connecting from the north would not be an option until such time as Stevens Creek is developed and the Stevens Creek sewer comes in. Schwinn inquired whether there has been any discussion about pumping from their existing treatment plant. Reynolds explained that the city has a longstanding policy against lift stations. But, Schwinn noted that there are lift stations in the city.

Steward asked Public Works to respond to the technical circumstances of sooner rather than later. Dennis Bartels explained that the village of Cheney is kind of on a ridgeline. The treatment plant or lagoons for Cheney are located in the Stevens Creek drainage basin. If we were to serve them today, we would have to build a sewer deeper than we would like to build, approximately 30' deep. When Public Works was asked for a recommendation, operating a gravity sewer at that depth was not recommended. The other option would be to pump from the area of the existing treatment plant up to the Antelope Creek sewer, which is proposed to serve the shopping center. In this proposed plan, if the sewer got built with the depth proposed, it would not preclude the option of pumping it to there, but it has been a longstanding policy to avoid lift stations because of the mechanical nature we're relying on for power. The gravity sewer system is the preferred way to do it and we have had a longstanding policy of trying to respect ridgelines. The pipe sizing has all been done based on the drainage basin size of Antelope Creek. Bartels does not agree with the characterization that we would be surrounding Cheney. The area immediately south of Hwy 2 and east of 98th will not be developed. If the city's position is that that general area should be served by gravity sewer, we've reached the edge of development in this vicinity until such time as the Stevens Creek sewer is extended.

If we were to annex Cheney, Schwinn wondered whether it would require complete rebuilding of their infrastructure since they only have a 2" water main. Bartels indicated that this has been discussed in general. The Rural Water District has some 6" mains, but a lot of them are 2" and 3". If we were to annex and provide fire protection, we would have to rebuild part or all of the system. We have not been supplied good records other than a schematic and a lot of the sizes are substandard. There would need to be extensive reconstruction of both their water and sewer systems.

Schwinn asked whether the city assesses the property owner for that construction. Bartels suggested that to be a legal question as to whether we can or cannot assess the costs.

Schwinn commented that when he left the subarea plan decision, he did not think that the residents of Cheney were going to be precluded in this manner. Reynolds reiterated that the sections quoted from the subarea plan talked about the annexation of Cheney as something to be investigated and that there are issues that need to be resolved before it could be included in the future service limits, including sewer design, water costs, and capacity issues. Based upon those issues, it was found that there was not a justification for including Cheney in the future service limit in reviewing this specific proposal.

With regard to the proposed amendments to the conditions of approval, Reynolds agreed with the amendment to Condition #1.1.1 regarding sidewalks; however, the staff would recommend additional language, “Sidewalk crossing points shall be located outside of the curb radius”. This will provide a shorter walking distance for the pedestrian.

With regard to the recycling facility in Condition #1.1.4 of the use permit, Reynolds pointed out that the solid waste section of the Comprehensive Plan provides that mixed use regional centers are good locations for recycling facilities and Public Works has requested that a recycling facility be shown. Therefore, the staff would not be in favor of deleting this condition.

With regard to Condition #1.1.9 of the use permit, Reynolds suggested revising that condition to “Label both Lots 10 and 11, Block 3, as office uses.”, rather than the amendment proposed by the applicant.

Reynolds agreed with the proposed amendment to Condition #1.1.13. This is to distinguish between this review and an administrative amendment. The intention is that Planning could track the total number of PM trips without the applicant having to go through administrative amendments. Carlson was concerned because there will be no knowledge by the Department of what those uses are. Reynolds clarified that on the perimeter pad sites, retail use could be converted to restaurant use provided they could provide the parking and the use does not increase the allowed trip traffic.

Response by the Applicant

With regard to the term “Temporary” for the Cheney connection, Seacrest pointed to the map and stated that the annexation agreement anticipates “this road” just like the subarea plan shows. What we are building is the first phase; we are then building a temporary connectiveness which is the T intersection. We once thought we were going to own all this land “over here” and it was logical for us to be involved in that road. But we don’t abut it anymore and we are building the first part permanently. We thought that connection to Cheney should be back further to get it away from Hwy 2. But the Cheney people wanted to volunteer some of their land for that road to connect further to the southwest. All we could do to help was to be sure to start the solution and build the temporary to allow full turn movements.

As far as the sewer, Seacrest stated that the developer did price and design its sewer while they could pump. We’ve got capacity in our section of the sewer line but there is a bottleneck further downstream. We could take the pump sewage if that is the vision of this community. We thought

Cheney was being annexed. If they don't get annexed, there could be some potential blighting factors. We've been doing our best to help Cheney.

As far as the sidewalk Condition #1.1.1, Seacrest agreed with the additional language proposed by staff. He maintained that Condition #1.1.4 for the recycling center should be deleted. He would agree to discuss it with staff before the project goes to Council. He thinks it is illegal to make the developer put it in.

Seacrest does not agree with the staff suggestion on Condition #1.1.8 to show office uses. Seacrest pointed out that there were 670 neighbors involved in the process and there is no one here against this project. There were 10 abutting neighbors and they're not here in opposition. Pine Lake SID and Pine Lake Assn. are not here in opposition.

Carlson moved to defer for two weeks, seconded by Newman. In Carlson's opinion, this plan and the information he has before him falls significantly short. If his criticism is large it is because his disappointment is large. His hopes were high based on the hard work and the diligence of the development team to this point. He fully expected to see the southeast Lincoln regional mixed use center and that is not what is in front of him. He wants to defer because his only other option is to vote to deny. The city and developer deserve to have this regional center done right.

Newman agreed totally. The other smaller issue is that there are a few details to work out between the developer and the staff. We need a better picture of the landscaping. It is absolutely no different than North 27th.

Steward believes we're trying to hold this developer to a standard that was not and is not clearly articulated. He questions the viability and the community asset of the disconnected box and the automobile oriented shopping center. He, too, was hoping for more. But the trouble he is having is that it is in conformance with the Comprehensive Plan; it is, in general, in conformance with the subarea plan previously approved; and it is what the current pattern for so-called employment centers is following. He does not agree with that pattern, but he believes they have satisfied, according to current requirements and statutory condition, the circumstances that are expected of them and have gone in some ways beyond that. He does not believe two weeks is going to satisfy the concerns that have been expressed. Will we all still have the same feelings of disappointment in two weeks and then have to act? He is ready to act on it now with the anticipation that in the detail design work there are more community values and community resolution that comes about. He is also concerned about the plight of the Cheney issue, but he believes that there is an opportunity in our current update of the Comprehensive Plan to work with that issue and to be sure that that community is in a stronger position.

Duvall will vote against deferral. When we approved the subarea plan we knew this was an area of big boxes and now we're seeing definition. Both sides have done a Herculean effort in developing this and he believes they have addressed all the issues.

Hunter commented that depending on the type of tenant, rear access may not be a reality. In order to set retail in a center location with parking all around really requires multi-uses on both sides. She does think that looking at the landscaping we are certainly not looking at another 27th Street. She also believes that they have addressed the issues. She is comfortable with the developer in terms of doing

a beautiful development. She has a problem with the recycling location. She gets the feeling that we've got a great developer doing a great plan and it's like holding someone hostage until they give in. She thinks those locations for recycling centers are better planned on their own merit instead of attaching them to someone else's project. This project has been in the planning process for eight years. And it has taken this long to get to the point where there is actually the first phase of development. It is probably going to be another 3-4 years before the next phase comes forward. By the time this becomes a fully developed center it could be another 10-12-13 years. While we have to be sensitive to the areas that are out there, we have to be careful about leapfrogging development into a situation where it is not quite there yet. The property values that exist in Cheney are going to double and triple off the charts compared to what they are now. This development is not a negative for Cheney. It's coming. This development has been coming for a long time. The time for Cheney to be annexed is coming in time. She will vote against the deferral.

Newman still sees an enormous sea of concrete parking lot here. She believes what we have talked about in mixed use centers is that there is access to transit and a comfortable pedestrian zone. She believes there should be a couple more landscaped pedestrian corridors through that parking lot. Gateway was going to move their bus stop out towards the post office. We had vision-impaired people struggling to get through that parking lot. She does not see that this is any different than that sort of situation.

It has been stipulated that they've met the criteria in the Comprehensive Plan. Carlson stated that he respects the Commission's ability to read the plan--maybe it's interpretation--but page 67 sets forth the goals of mixed use centers and this plan does not meet those goals. In his opinion, this project does not meet the goals in the Comprehensive Plan.

Taylor is concerned about the Cheney people. He is confident that this will be a good development because he has confidence in the developer. All things considered, he does not believe that this necessitates a deferral.

Schwinn agreed with Steward.

Motion to defer failed 2-6: Carlson and Newman voting 'yes'; Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'no'; Krieser absent.

Public hearing was closed.

COMPREHENSIVE PLAN CONFORMANCE NO. 01002
ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 19, 2001

Duvall moved approval, seconded by Steward and carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Krieser absent.

ANNEXATION NO. 01006

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 19, 2001

Duvall moved approval, subject to the annexation agreement, seconded by Bills and carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Krieser absent.

CHANGE OF ZONE NO. 3285

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 19, 2001

Duvall moved approval, seconded by Bills and carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Krieser absent.

CHANGE OF ZONE NO. 3320

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 19, 2001

Duvall moved approval, seconded by Hunter and carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Krieser absent.

PRELIMINARY PLAT NO. 01006, APPIAN WAY

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 19, 2001

Steward moved to approve the staff recommendation of conditional approval, with the applicant's proposed amendments, including the additional language proposed by staff in Condition #1.1.1, seconded by Bills.

Carlson made a motion to amend to change Condition #1.1.1 to require sidewalks on both sides of the private roadways, with the crossing points outside of the curb radius, seconded by Newman. Duvall suggested that it is overkill to require sidewalks on both sides. In this sea of parking lots, he believes that one side takes care of it.

Bills concurred because she believes that the sidewalks will get very little use in a parking lot.

Motion to amend to change Condition #1.1.1 to require sidewalks on both sides of the private roadways failed 3-5: Hunter, Carlson and Newman voting 'yes'; Steward, Taylor, Duvall, Bills and Schwinn voting 'no'; Krieser absent.

Main motion carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting 'yes'; Krieser absent.

RECONSIDERATION OF PRELIMINARY PLAT NO. 01006,

APPIAN WAY

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 19, 2001

Carlson moved to reconsider Preliminary Plat No. 01006, seconded by Newman carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting 'yes'; Krieser absent.

Motion made by Steward, seconded by Bills, to approve the Planning staff recommendation of conditional approval, with the amendments as proposed by the applicant, including the additional language in Condition #1.1.1 recommended by staff. Motion carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Newman and Carlson voting 'no'; Krieser absent.

USE PERMIT NO. 140

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 19, 2001

Hunter moved to approve the Planning staff recommendation of conditional approval, with the amendments proposed by the applicant, with the same amendment to Condition #1.1.1 as approved on the preliminary plat, seconded by Duvall.

Steward moved to amend to retain Condition #1.1.4 and to change the word "Provide" to "'Identify' at least one area for recycling drop off facilities at a location acceptable to Public Works.", seconded by Duvall. Hunter asked whether the intent is that the developer is expected to donate land. Steward explained that his intent is that the developer identify a location on the site plan, taking the applicant on their word that they will discuss this between now and Council approval. His intent is that it not be a mandatory provision of property. Motion to amend carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting 'yes'; Krieser absent.

Carlson sought clarification of Condition #1.1.13 (now #1.1.9). Reynolds explained that the staff language, "review and approval", implies that if the land use table in the use permit were changed, the applicant would apply to the Planning Department, the Planning staff would send it out for review by other departments and it could be approved administratively. The applicant's proposed amendment to this condition ("verification that it complies with the square footage and P.M. trip caps") allows the developer to change those uses without going through an administrative amendment. Hunter inquired whether there is an opportunity to impose a restriction in terms of no restaurants, no banks, no liquor stores, or 19 Burger Kings. Reynolds explained that the use permit approves the amount of square footage and trip caps. As long as they stay under the 900,000 sq. ft. and under the PM hour peak trips, they are not required to go through an administrative amendment process to change from a restaurant to office or office to restaurant, for example.

Steward observed that what we are trying to assure is that the public has adequate transportation infrastructure, but we cannot hold the developer to a strict use requirement at this stage. Reynolds concurred. They cannot go beyond the amounts allowed by the traffic study. They are currently showing 803,000 sq. ft.

Carlson commented that he has seen use permits come forward that have the pad sites specifically identified. Not having that in this situation, he wonders if it can be put in front of a public body prior to approval of a project. Reynolds advised that the developer has identified the pad sites as restaurant, financial office, etc., and he will provide that information to the City Council.

Motion for conditional approval, with amendments, carried 7-1: Hunter, Carlson, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Newman voting 'no'; Krieser absent.

RECONSIDERATION OF USE PERMIT NO. 140

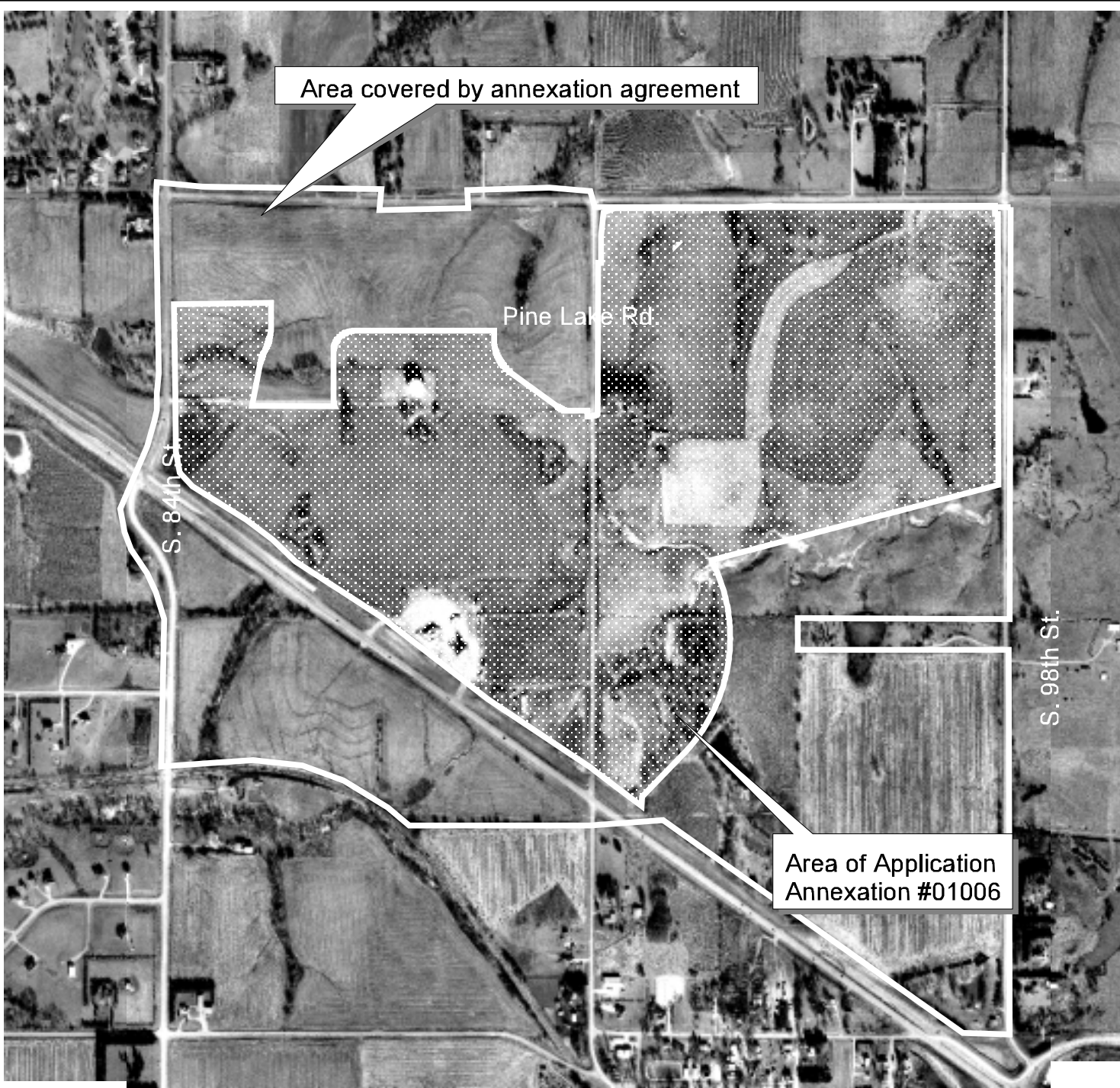
ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

September 19, 2001

Carlson moved to reconsider Use Permit No. 140, seconded by Steward and carried 8-0: Hunter, Carlson, Steward, Taylor, Duvall, Bills, Newman and Schwinn voting 'yes'; Krieser absent.

Motion made by Hunter, seconded by Duvall, to approve the Planning staff recommendation of conditional approval, with the amendments proposed by the applicant, including the additional language in Condition #1.1.1 proposed by staff, except that Condition #1.1.4 is amended and retained concerning the recycling facility.

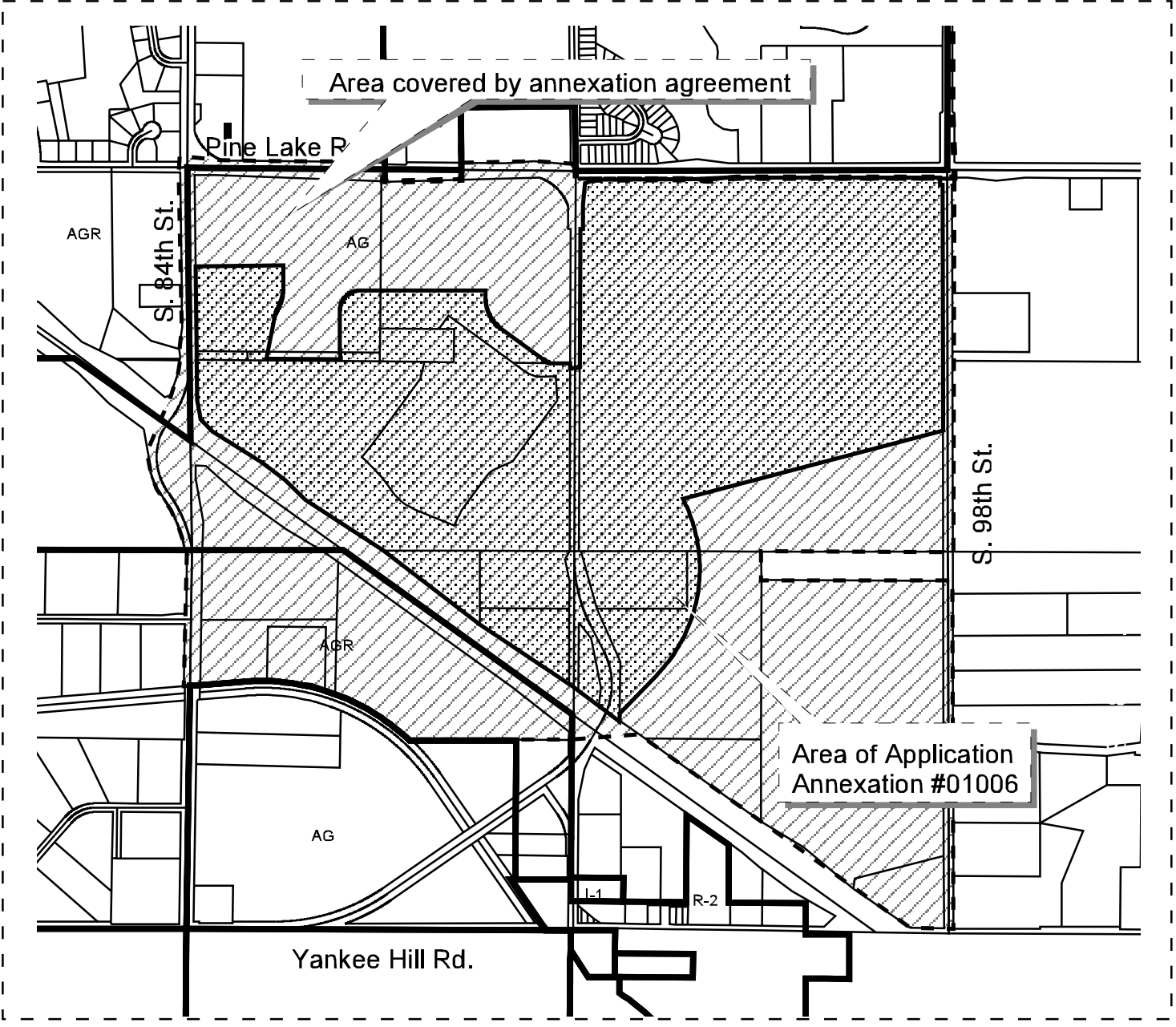
Motion carried 6-2: Hunter, Steward, Taylor, Duvall, Bills and Schwinn voting 'yes'; Carlson and Newman voting 'no'; Krieser absent.



Annexation #01006 S. 84th & HWY #2



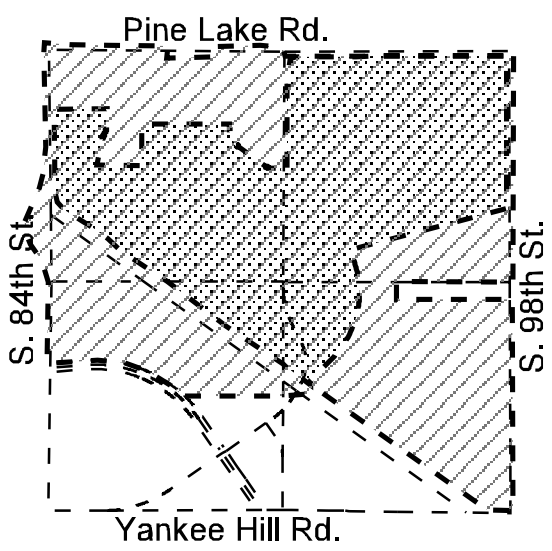
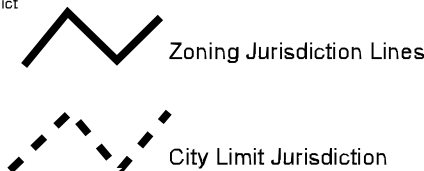
Photograph Date: 1997



Annexation #01006 **S. 84th & HWY #2**

- Zoning:**
- R-1 to R-8 Residential District
 - AG Agricultural District
 - AGR Agricultural Residential District
 - R-C Residential Conservation District
 - O-1 Office District
 - O-2 Suburban Office District
 - O-3 Office Park District
 - R-T Residential Transition District
 - B-1 Local Business District
 - B-2 Planned Neighborhood Business District
 - B-3 Commercial District
 - B-4 Lincoln Center Business District
 - B-5 Planned Regional Business District
 - H-1 Interstate Commercial District
 - H-2 Highway Business District
 - H-3 Highway Commercial District
 - H-4 General Commercial District
 - I-1 Industrial District
 - I-2 Industrial Park District
 - I-3 Employment Center District
 - P Public Use District

One Square Mile
 Sec. 23 T9N R7E



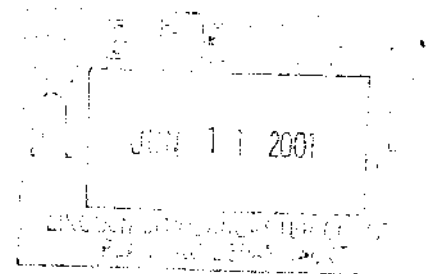
SEACREST & KALKOWSKI, P.C.

1111 LINCOLN MALL, SUITE 350
LINCOLN, NEBRASKA 68508-3905

TELEPHONE (402) 435-6000
FACSIMILE (402) 435-6100
E-MAIL: sk@sklaw.inetnebr.com

KENT SEACREST
DANAY KALKOWSKI

11 June, 2001



Ms. Kathleen Sellman
Planning Director
County-City Building
555 South 10th Street
Lincoln, NE 68508

RE: 84th and Highway 2 Regional Center Preliminary Plat #01006, Use Permit #140

Dear Kathleen:

Our law firm represents Andermatt, L.L.C. , as the landowner and Eiger Corp., as the developer in regards to the 84th and Highway 2 Regional Center Preliminary Plat #01006 and Use Permit #140.

Enclosed please find the following documents:

1. 20 copies of the Site Plan
2. 10 copies of the Grading & Drainage Plan
3. 5 copies of the Street Profiles
4. 10 copies of the Landscape Plan
5. 3 copies of the Highway 2 Interchange (potential)
6. 6 copies of the Drainage Study

The following are Eiger's specific responses to City Staff comments regarding the numbered paragraphs in your May 25, 2001 letter:

1. The infrastructure improvements, annexation and phasing must be coordinated with the Heritage Lakes Preliminary Plat #01004.

Under separate cover last Friday, Eiger proposed to the City in the Conditional Annexation and Zoning Agreement For S. 84th & Highway 2 the necessary public infrastructure improvement for the Andermatt residential and commercial lands as shown in the S. 84th & Highway 2 Subarea Plan. For your information, the applicant of the Heritage Lakes Preliminary Plat has informed Andermatt and Eiger, that Heritage Lakes

Preliminary Plat is no longer a viable residential project. The City's proposed infrastructure improvements abutting the residential project was deemed excessive by the applicant.

2. Submit proposed annexation boundaries and a proposed annexation agreement detailing the responsibilities for infrastructure improvements for the review of the City.

Under separate cover, Eiger mailed the City last Friday a proposed Conditional Annexation and Zoning Agreement For S. 84th & Highway 2 ("Annexation Agreement"). The Annexation Agreement includes a map showing the first phase of the annexation. As soon as the City agrees on this annexation map, Olsson Associates will prepare corresponding legal descriptions. Annexation boundaries and agreements are herein included.

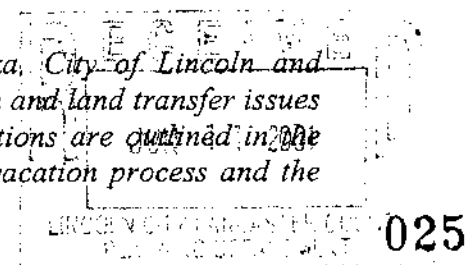
3. Section 27.37.070(e) of the Zoning Ordinance requires that the application be filed in writing by the property owner. The application was filed on behalf of Eiger Corporation. The other property owners within the boundaries of the proposed plat and use permit include Andermatt L.L.C., Westcor L.L.C., David Olsson (currently being contested in court by Realty Trust Group, Inc.), the State Department of Roads, the City of Lincoln, and Lancaster County.

All consenting property owners within the preliminary plat and use permit boundaries will be included. Westcor, L.L.C. is a recorded landowner of Lots 87 and 84. David S. Olson is the record landowner of Lot 58. In addition, there is pending litigation between Olson and Realty Trust Group regarding a disputed purchase agreement for the sale of Lot 58 from David S. Olson to Realty Trust Group. Eiger has prepared and forwarded to Westcor, Olson and Realty Trust coordination agreements and the Annexation Agreement. Our office, along with attorney Mike Morrow, are working with the three parties towards reaching agreement on the key City land use issues and obtaining the three parties consent to the use permit and preliminary plat. As soon as the developer has obtained the three property owners' consents, they will be forwarded to you. In the event the developer is unsuccessful at obtaining an abutting property owner's consent in the next two weeks, then the developer will ask the City to amend our annexation, change of zone, use permit and preliminary plat to exclude the applicable property owner.

In regards to the ownership interest of the State Department of Roads, the City of Lincoln, and Lancaster County, see the next comment.

4. The existing 91st Street right-of-way owned by Lancaster County and the right-of-way owned by the State Department of Roads must be vacated. Section 26.15.040(b) requires all requests to be submitted to the city for vacations which are required to complete the development.

Our office has met with officials from the State of Nebraska, City of Lincoln and Lancaster County regarding the 91st Street realignment, vacation and land transfer issues and solutions for South 91st Street and the Water Tank. Solutions are outlined in the Annexation Agreement. The State of Nebraska has begun its vacation process and the



City Attorney has advised our office of the necessary steps to meet the City's requirements. The developer is in the process of carrying out these instructions and expect to be successful. Vacations of necessary rights-of-way and Water Tank site are underway and will be resolved prior to any final plats.

5. The developer must own all the property included in any final plat. City owned land and public right-of-way of 91st Street are included in this plat.

As part of the Annexation Agreement, use permit and preliminary plat, the developer is proposing a new alignment for S. 91st Street and vacation of portions of the existing S. 91 Street that will no longer be needed with the new alignment. Prior to any final plats, ownership of all parcels will be resolved.

6. Submit a finalized traffic study for review along with proposed caps on vehicular trips. Revise the plans to include a table detailing the land uses and trip limits.

Under separate cover, HWS submitted a final traffic study.

7. Address the area of land between the existing and proposed new 84th Streets. The resulting parcels appear to be less than 10 acres in size and therefore must be included within this preliminary plat.

Subject property has now been included as an outlet.

8. Revise the plans to show street trees along Highway 2, S. 87th Street, Eiger Drive, and Andermatt Drive.

Street trees have been included.

9. The northern section of proposed S. 87th Street adjacent to Outlot D must be renamed as it is not a north/south road.

Street names have been changed.

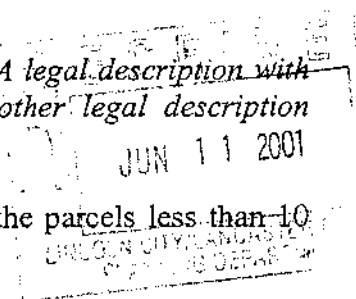
10. Revise the plans to clearly identify the lot lines and building envelope lines and the boundaries of the outlots. Provide a legend showing the different lines used, use consistent lines and line weights.

Graphics have been modified and legend added.

11. Revise the boundaries of the use permit to exclude right-of-way.

The developer has modified the plans to show two boundaries. A legal description with the right-of-ways is included in the preliminary plat and another legal description without the right-of-ways is included in the use permit.

12. Revise the boundaries of the preliminary plat to include all of the parcels less than 10 acres that are created as a result of the proposed plat.



Boundaries of the preliminary plat have been modified.

13. Revise the plans to relocate the gas station. The existing location appears to create problems with vehicular and pedestrian circulation, stacking and access.

Gas station has been relocated and required stacking has been shown.

14. Identify the large island shown in the parking lot west of the gas pumps.

The large island within the parking lots of Lots 5 and 6 is a landscaped island. Details will be submitted along with building plans.

15. Identify whether S. 87th Street is a public or private road, show the limits of the right-of-way.

South 87th Street will be public and the developer hereby asks for a waiver of required front yard setback for Lot 1, Block 2.

16. Address the possibility of a future grade separated intersection at S. 87th Street and Highway 2.

With the 50 foot setback and the additional 50 feet of landscaped area, there is sufficient room to incorporate an interchange at 87th Street. Grade wise there would need to be some retaining walls and street grades of 5-6%. The enclosed drawing illustrates one proposed alternative.

17. Address the landscaping and screening requirements for parking lots on the landscape plan.

Except for the 91st Street parking area, all other parking lots along the perimeter are generally located 100-feet back from the property line. The applicant is therefore not required to screen them. The one parking area along 91st Street will be screened. Our landscape plan shows extensive landscaping along the perimeter and in addition the property owners will be developing berming along these perimeter areas.

18. Revise the plans to move the signs outside of the front yard setbacks. The sign at the intersection of 91st and S. 87th appears to be located in a detention cell.

Along Highway 2, S. 84th Street and South 91st Street, the plan voluntarily show a 100-foot open area. There is a required 50-foot front yard setback along both S. 84th Street and Highway 2 and a 100-foot front yard setback along S. 91st Street. The plan relocates the signs out of the required 50-foot front yard area abutting Highway 2 and South 84th Street and places the signs into the second 50-foot open space area.

There is a required 100-foot front yard setback along 91st Street. The plans relocate the signs out of the first 50-foot area adjacent to the street and into the second 50-foot area. Since the same developer controls both sides of 91st Street, the developer is agreeable to

JUN 11 2001

this proposed sign waivers along 91st Street.

No signs are located in detention cells.

19. Revise the plans to provide sidewalks on both sides of the streets and along the main driving aisles.

The plan shows a sidewalk along one side of all major driving isles. The property owners will locate the walks along the most appropriate side of each major driving isles. Experience has illustrated that no one walks to and from the out parcels. If they did, they would need to cross the roadways anyway to access the parcels. One side is more than adequate as evidence by Lincoln's other major shopping areas. Therefore, the applicants continues to request the corresponding sidewalk waivers.

20. Revise the plans to clearly show the potential layout of the property at the north end of the proposed plat as required by Section 26.23.015(d) of the Subdivision Ordinance.

Possible layout has been made more clearly.

21. Revise the plans to show street extensions into the abutting property for 300' surrounding the perimeter of the proposed plat as required by Section 26.23.030 of the Subdivision Ordinance.

Plans have been revised as required.

22. Revise Note 4 to remove the word "entire."

Note 4 has been revised.

23. Revise note 5 to indicate that sidewalks will be constructed at the time the roads are initially constructed, not at the time of the ultimate width.

Sidewalks will be constructed initially.

24. Revise note 5 to reflect a 10' trail.

Note 5 has been modified.

25. Revise note 9 to indicate that the lot lines may vary up to 10', not 100'.

During our initial discussions with Planning staff, it was suggested by the City Planning Department and agreed to utilizing 100-feet to eliminate future protracted revision processes. Regardless of where property lines are, the property owners are ultimately governed by total square footage and by P.M. trips.

26. Revise note 10 to remove the language "shall be permitted within the front yard setback provided they are not constructed in intersection site triangles or required easements."

JUN 11 2001

Note 10 has been modified.

27. Revise note 10 to indicate that ground monument signs shall have a maximum area of 100 square feet as required by Section 27.69.060(c). Revise the note to indicate that ground monument signs will have a maximum height of 8 feet per the requirements of 27.69.060(d) of the Zoning Ordinance. Indicate the type of sign that will be placed on the site. Refer to the definitions of signs in section 27.60.020 and the requirements of 27.69.060 in the Zoning Ordinance.

Note 10 has been modified.

28. Revise note 10 to indicate that pad sites may have ground monument signs in conformance with Section 27.69.060 of the zoning ordinance.

Note 10 has been modified.

29. Revise the plan to grant public access easements over the parking lots, driving aisles and private roadways in order to provide access to each lot from a public street or private roadway.

Public access easements will be shown over the private roadway and major driving isles.

30. Revise Note 18 to add "provided circulation access drives are consistent with the approved plans, internal vehicular circulation is provided between all lots, and all zoning regulations and design standards are met."

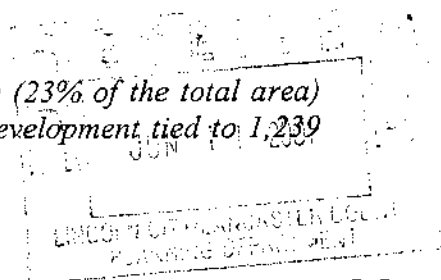
Note 18 has been modified.

31. Revise Note 20 to specify a maximum amount of square feet allowed for the center and specify the maximum number of vehicular trips that are allowed, and the 5% adjustment is per lot. In other words, each lot is limited to a 5% adjustment provided that the maximum number of vehicular trips established is not exceeded. Any increase over 5% per lot or that exceeds the vehicular trip cap will require an amendment to the Use Permit.

As an overview to the issue of square footage and P.M. peak hour trips, there is a total land area bounded by 84th Street, relocated Pine Lake Road, 91st Street, and the railroad tracks south of Highway 2, of 257 acres. The Comprehensive Plan outlines approximately 1,900,000 sq. feet. The traffic study outlines 5850 P.M. peak hour trips. The amount of land and square footage of development amounts to an overall development intensity of approximately 17% or a FAR of .17.

Therefore:

The area south of Highway 2 is approximately 60 acres (23% of the total area) and would be allocated approximately 440,000 s.f. of development tied to 1,239 P.M. peak hour net vehicle trips.



The area north of Highway 2 is approximately 197 acres (77% of the total area) and would be allocated approximately 1,380,000 s.f. of development tied to 4,611 P.M. peak hour net vehicle trips.

The City desires a good balance of development and trips over the entire project area. Concerns should arise if one area begins to be overly developed to the detriment of the roadway system and the other areas. It would be our recommendation that the flexibility of moving property lines up to 100 feet (Question 25) and the flexibility of 10% (instead of 5%) square footage adjustments is not the critical measurement. It is the overall square footage and the P.M. peak hour trips.

32. Revise note 22 to add that all zoning requirements must be met.

Note 22 has been modified.

33. Submit the new alignments and geometrics for the 84th and Highway 2 intersection for the review of the Public Works Department. The intersection of 84th and Highway 2 and 87th and Highway 2 shown on the proposed plan are subject to relocation pending the submittal of the new alignments and geometrics.

Eiger has proposed the 84th Street realignment and intersection improvement, as well as the S. 87th Street intersection, cost sharing formulas and timetables in the Annexation Agreement. The City Administration is reviewing the Annexation Agreement. Olsson Associates has submitted proposed geometrics for the S. 84th & Highway 2 Intersection. The developer will accommodate any reasonable future modifications proposed by Public Works Department.

34. The installation of the water lines, the abandonment of the water tank, and the pavement of S. 84th Street must be coordinated.

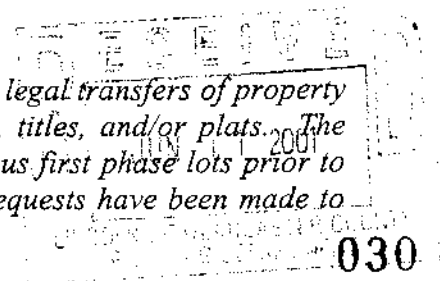
Agreed. These matters are outlined in the Annexation Agreement.

35. The water tank property must be declared surplus by the City Council prior to final plats. A request to surplus the property must be submitted, reviewed and approved by the city departments, then forwarded for the review of the Planning Commission and City Council.

Under separate cover to the City Water Department, the developer has request the water tank property be declared surplus pursuant to the Annexation Agreement. The developer will work closely with the City to ensure timing and coordination are accomplished.

36. The water tank must be taken out of service before final plats are scheduled on the Planning Commission agenda.

We assume that what is being requested is that all appropriate legal transfers of property are carried out such that there are no problems with legals, titles, and/or plats. The property owners do expect to receive a final plat for the various first phase lots prior to the City taking the water tank out of service. All necessary requests have been made to



the Lincoln Water System and coordination will be obtained and addressed in the Annexation Agreement.

37. Provide the easements requested by LES. Add a note indicating that any relocation of existing facilities will be at the developer's expense.

LES has not requested any specific easements. Note has been added.

38. LES noted that "On May 11, 2001 LES provided Olsson & Associates estimated costs for two corridor options to relocate the 115,000 volt transmission line in the area around the proposed 91st Street between Highway 2 and Pine Lake Road. At this time, the developer has not granted LES a replacement easement or provided authorization to proceed with any relocation work.

The LES transmission line is no longer being proposed for relocated along S. 91st Street.

39. Revise the landscape plan to show a replacement easement or corridor for the transmission line satisfactory to LES.

The LES transmission line is not being relocated.

40. Revise the landscape plan to show landscape materials satisfactory to LES in and adjacent to easement corridors.

The LES transmission line is not being relocated.

41. LES noted that if the transmission line is relocated at a later date, additional relocation costs may be incurred to restore damage to corridor improvements resulting from construction. LES noted that additional costs could include tree trimming or removal of landscaping materials as necessary to maintain electrical safety clearances.

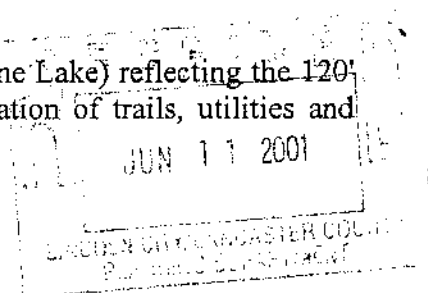
Agreed.

42. Revise the plans to satisfy the City and County Engineer's concerns about the "free right" at 98th and Pine Lake Road.

The intersection of Pine Lake Road and 98th Street is not needed as a part of this project. If the City desires the "free right" movement, the developer has proposed that the City construct the project at the time the City improves Pine Lake Road or South 98th Street north of Pine Lake Road. The developer assumes that the right turn would be associated with some future Capital Improvement Program.

43. Provide a "typical section" of the public way corridor (91st/Pine Lake) reflecting the 120' and 130' rights of way. The section should include the location of trails, utilities and landscaping.

Typical sections are included.



44. Revise the landscape plan to show utility easements and the bike trail. The street tree locations need to be coordinated with the utility locations within the corridor.

Landscape plan has been revised. All walks, trails, and utility easements are within the 120' and 130' rights-of-way. All landscaping will be on private property.

45. Revise the plans to show the bike trail at least 6 feet behind the curb line. The trail should be 10' wide and meander where possible. Since the trail is in a public way corridor, an additional 6 feet of right-of-way or easement is required.

Plans have been modified. Ten foot trail fits within the right-of-way.

46. Revise the plans to show a right-of-way landscape plan. A low native ground cover is suggested for minimal maintenance.

There is no intent by the developer to landscape the rights-of-way.

47. A minimum 8 foot wide median is required for maintenance.

No landscaped areas are proposed in medians less than 8-feet wide.

48. Revise the plans to show reinforced concrete pipe (RCP) at all storm water crossings.

Plans have been revised.

49. Revise the plans to replace Austrian Pine and/or Scotch Pine due to disease problems. Black Hills Spruce, Norway Spruce or Colorado Spruce may be substituted.

Plant material has been revised.

50. Revise the plans to address the relocation or abandonment of the existing rural water lines. Provide evidence that the hook-up issues and costs associated with the Rural Water District No. 1 have been satisfied.

The Annexation Agreement addresss the Rural Water District No. 1 issue and the developer has agreed to meet the legal requirements of the Rural Water District No. 1.

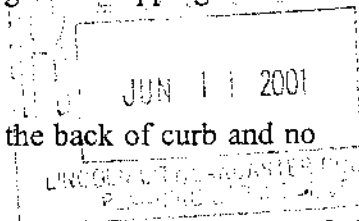
51. Revise the plans to show additional fire hydrants to the satisfaction of the Fire Department.

Fire hydrants have been revised.

52. Revise the plans to show a recycling drop-off site as part of the regional shopping center.

Drop-off site will not be shown.

53. Revise the plans to show street trees located at least 6 feet from the back of curb and no closer than 4 feet to the bike trail.



Location of all plant material have been adjusted.

54. Please add a note indicating that any wells on the property must be properly abandoned or have an annual permit from the Lincoln Lancaster County Health Department to operate.

Note has been added.

55. The proposed water system must be revised to meet design standards. Public water mains must be located along public or private roadways. The public mains shown along parking lot aisles and driveways are unsatisfactory.

Public water system has been modified.

56. The plat includes a City water reservoir and City owned property. This plat cannot be fully developed without moving the reservoir. Any phased development and grading done on City property must be approved by the Lincoln Water System.

All necessary requests have been made to the Lincoln Water System and coordination will be obtained and addressed in the Annexation Agreement.

57. The sanitary sewer located north of Lot 5, Block 3 is unsatisfactory. The easement is substandard. The sewer is located between buildings in an area that will be used to serve the buildings and may be paved. If the sewer location is retained, the sewer should be privately owned and maintained.

Sanitary sewer has been modified.

58. A portion of this site is in the Beal Slough drainage basin. Since Beal Slough is master planned, design standards require that the discharge from this site be compared with the master plan discharges per Section 8.5 of the Stormwater Drainage Design Standards.

The drainage study addresses these concerns.

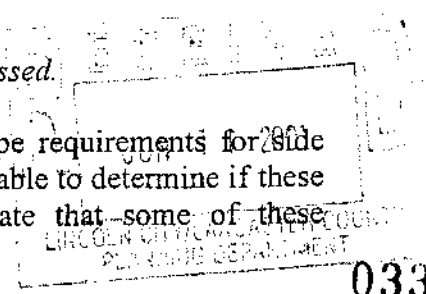
59. No provisions are shown through the detention basins to provide for a low flow or pilot channel as required by design standards. Public Works recommends that the requirement not be waived.

The drainage plan has been modified to show HDPE low flow pipe where needed.

60. The 100-year elevation for Basin D16 is above the low point of the street grade low point adjacent to it and is unacceptable.

Drainage plan has been modified and concerns have been addressed.

61. Design standards for detention facilities require minimum slope requirements for side slopes and slope of the bottom. Insufficient information is available to determine if these requirements are met. Interpretation of the contours indicate that some of these



requirements are not met.

Drainage plans have been modified and concerns addressed.

62. The plans show storm sewer in the surrounding arterial streets. The annexation agreement, plat, or both must indicate how these storm sewers will be built and who will bear the costs.

Storm sewers will be built along with roadways and who pays has been addressed in the Annexation Agreement as part of who pays for the associated streets. Costs of storm sewer has always been assumed within street costs.

63. The drainage study and storm water detention analysis includes land that is outside the limits of the plat and use permit. It is also shown on property not under control of this developer. These detention basins are not required for the plat as submitted.

Drainage plans have been modified.

64. Revise the plans to provide additional labeling to clearly indicate the contour elevations.

Additional elevations have been added.

65. Provide an executive summary of the detention information as previously requested. The information submitted is difficult to review in the format submitted. Engineering Services requests a meeting with Olsson's to discuss this format prior to resubmittal.

Resubmittal includes overview and addresses Engineering Services' concerns.

66. Revise the plans to show an internal loop road system so that internal traffic does not circulate using parking lot aisles and drives or 91st Street.

Interval circulation has been modified to provide a more direct and viable connection between major areas.

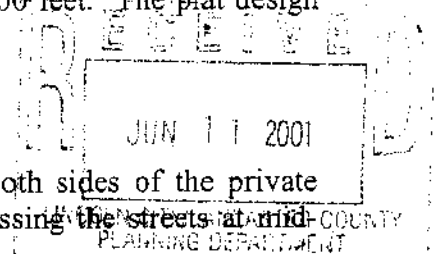
67. Revise the plans to address how truck circulation is intended to provide service to the commercial buildings. The paving width and radii must be confirmed in the areas where truck traffic is required.

Truck turning requirements at loading areas have been included.

68. The Phase I storage length for left turns as Eiger Drive at 84th is shown in the impact study at 450 feet. The design of Eiger Drive shows less than 300 feet. The plat design will not allow 450 feet.

Eiger Drive will be constructed with dual lefts.

69. The Public Works Department recommends sidewalks along both sides of the private roads. Lots are located along both sides of private roads. Crossing the streets at mid



block should not be encouraged by eliminating sidewalks. A sidewalk system should be provided from the private roads to the big box sites and from the future office area to encourage pedestrian movement between uses.

Sidewalks have been added up the access drives to the big box sites. Also refer to Question No. 19.

70. Right-of-way stubs need to be provided at all the private road intersections with arterial streets. The depth of the stubs must be sufficient to include space for all traffic control devices. Corner triangles of right-of-way at these intersections are also needed.

Right-of-way stubs are provided.

71. The driveway west of 91st Street on 87th is too close to 91st Street. The left turn stacking required in 87th Street prevents any left turn stacking at the driveway.

Drive location has been changed.

72. A minimum of 4 lanes of pavement is required at the approaches to all intersections of arterial streets.

The City has developed a standard design for its arterial streets which can accommodate dual lefts where needed. Regardless of any traffic studies, the City requires the construction of both dual lefts and paints one out until required. Because the major arterials are built providing dual lefts does not mean that they are required. Everywhere the traffic study has indicated an eventual need for dual lefts, the developer has provided two lanes to receive the dual lefts. Where the traffic study indicates there is no need for dual lefts, there is only one lane to receive the single left turn.

73. The grades of 84th Street approaching Eiger Drive and Pine Lake Road exceed 4% in the approach of these proposed signalized intersections. This is contrary to design standards. Sight distance due to crest at the approach to these intersections must be confirmed to meet requirements.

The revised grades are in conformance with design standards.

74. The final alignment of 84th Street and Highway 2 is still under consideration. The plat may need to be revised to reflect the alignment chosen.

Agreed.

75. In general, it appears the length of turn lanes shown on the plat were designed at minimums, not desirable standards. The length of turn lanes must be considered utilizing the length of queued vehicles, not just the vehicles in the turn lanes.

All turn lanes have been designed based upon total build out and the City's Design Standards. The developer knows of no design standard nor City standard practice where designed turn lanes were intentionally lengthened to accommodate queued traffic in the

through lanes. It does not make economic sense from the developer's perspective. If the City desires longer turn pockets, the City could use its funds to extend the turn lanes.

76. The geometry that is shown on the plat must depict the geometry required to accommodate future traffic volumes and the right-of-way that may be determined in the off site improvement agreement.

The property owners have consistently shown the City's typical urban section within 120-foot right-of-way expanded to 130-foot right-of-way at major intersections.

77. Dimensions of the proposed arterial pavement along with its dimensional relationship to the proposed right-of-way must be shown to determine if proposed widths are adequate.

Dimensions have been added.

78. All right-of-ways must be clearly dimensioned.

Dimensions have been added.

79. Revise "required parking ratio". The minimum parking in the B-5 district is 4.5 parking spaces per 1,000 square feet of floor area, except restaurants, hotels and motels.

Required parking ration has been changed.

80. Revise the minimum parking column for "Walmart/Retail". The minimum required parking is 923 based on 4.5 spaces per 1,000 square feet of floor area.

Minimum parking has been changed.

81. Remove the words "preliminary plat" from the City Council approval certificate.

Approval certificate has been modified.

82. Remove trade names (e.g., WalMart) from the documents to avoid amendments based solely on a change in the name of the tenant.

Trade names have been removed.

83. The following specific comments are made concerning the proposed abutting arterial streets and the proposed intersections:

All lengths of turn lanes have been determined through an extensive traffic analysis which recognized the City's build out scenario 2 and total build out of the commercial and residential areas. The developer does not propose separate right turn lanes, unless the traffic study indicated the need. All interval roads are not designed as four lane roadways. Four lanes are not necessary. (See answer to Question 72). All specific concerns about lane alignments, access to the south property and access to Cheney can be accommodated. This general comment addresses the developer's position regarding

all the following intersection improvements.

84th Street at the main entrance south of Pine Lake Road

- a. Southbound dual left turn lanes need to be lengthened.
- b. Northbound right turn lane must be lengthened.
- c. This plat shows a four lane cross section on 84th Street plus dual left turn lanes in Phase I, unfortunately, they could complete Phase I and be open for business long before this cross section is in place. In addition, the impact study determined the length of turn lanes and the intersection LOS with the four lane cross section.

84th Street at Highway 2

- a. Southbound dual left turn lanes need to be lengthened.
- b. 84th Street south of Highway 2 is shown with only one southbound through lane, however, north of Highway 2 there are two southbound lanes shown.

87th Street at Highway 2

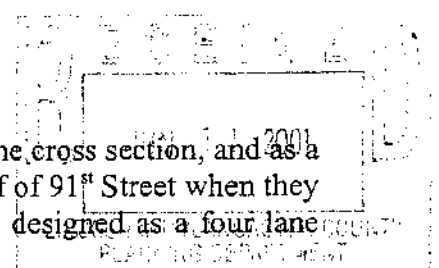
- a. Eastbound dual left turn lanes need to be lengthened.
- b. Eastbound right turn lane must be lengthened.
- c. Southbound left turn lane and right turn lanes need to be lengthened. The length of the turn lanes between Andermatt Drive and Highway 2 should be maximized.
- d. Westbound left turn lane must be lengthened.
- e. Westbound right turn lane must be lengthened. If the north leg of the intersection is constructed to ultimate design and the south leg is not constructed concurrently, the developer shall be responsible for the costs associated with the interim closure of the southbound through lane on the north leg of the intersection.

91st Street at Highway 2

- a. The left turn lanes on Highway 2 need to be aligned so that they oppose each other.
- b. Westbound right turn lane must be lengthened.
- c. Southbound right turn lane must be lengthened.
- d. Southbound left turn lane must be lengthened.
- e. The construction of the south leg of the intersection should be constructed concurrently with the north leg of the intersection to not only ensure proper alignment, but also establish the primary access to the village of Cheney.

91st Street at the first entrance north of Highway 2 (Andermatt Drive)

- a. Southbound left turn lane must be lengthened.
- b. Southbound right turn lane must be shown on the plat.
- c. Northbound left turn lane must be lengthened.
- d. Northbound right turn lane must be shown on the plat.
- e. It appears that Andermatt Drive is shown as a three lane cross section, and as a result, will not accommodate dual left turn movements off of 91st Street when they are warranted in the future. Andermatt Drive should be designed as a four lane cross section.



91st Street at the second entrance north of Highway

- a. Southbound left turn lane must be lengthened
- b. Southbound right turn lane must be shown on the plat.
- c. Northbound left turn lane must be lengthened.
- d. Northbound right turn lane must be shown on the plat. It appears the second drive north of Highway 2 is shown as a three lane cross section, and as a result, will not accommodate dual left turn movements off of 91st Street when they are warranted in the future. The second drive should be designed as a four lane cross section.

91st Street at Pine Lake Road

- a. Lengthen the northbound left turn lane.
- b. Lengthen the south westbound right turn lane.
- c. Roadway improvements should be continued from the intersection of Pine Lake Road and 91st Street east through the intersection of 98th Street and Pine Lake Road.

You have asked us to designate one contact person for the applicant. After consulting with the Mayor's Office, the undersigned is the designated contact person. Please let us know if you need further information or have further questions. On behalf of Andermatt, L.L.C. and Eiger Corp., we thank you for your time on this very important matter.

Yours very truly,

Kent

KENT SEACREST

For the Firm

cc without enclosures:

Dennis Bartels
Jennifer Dam
Rick Peo
Lynn Johnson
Greg Sutton
Kelvin Korver
Jack Lynch, OA Project No. 99-0677
Mark Palmer
Mike Gorman
Mike Morrow

